

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

CITY OF COTTLEVILLE, MISSOURI, )  
                                       )  
Plaintiff,                         )  
                                       )  
vs.                                 )                                      Case No. 4:17 CV 2150 RWS  
                                       )  
T-MOBILE CENTRAL, LLC,         )  
                                       )  
Defendant.                         )

**MEMORANDUM AND ORDER**

This matter is before me on defendant's motion to dismiss. Having carefully considered the parties' arguments under the relevant standards,<sup>1</sup> the motion to dismiss must be denied. Plaintiff's complaint adequately alleges the elements of its claim to collect unpaid business license taxes. *See City of Springfield v. Sprint Spectrum, L.P.*, 203 S.W.3d 177 (Mo. banc 2006). Defendant's remaining

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<sup>1</sup> To decide a motion to dismiss under Fed. R. Civ. P. 12(b)(6), I must assume all the facts alleged in the complaint are true and liberally construe the complaint in the light most favorable to the plaintiff. *Foster v. Deutsche Bank Nat. Trust Co.*, 2012 WL 5285887, at \*2 (E.D. Mo. Oct. 25, 2012) (citing *Eckert v. Titan Tire Corp.*, 514 F.3d 801, 806 (8th Cir. 2008)). The allegations must be sufficient "to raise a right to relief above the speculative level," however, and the motion to dismiss must be granted if the complaint does not contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007). Thus, a dismissal under Rule 12(b)(6) should be granted "only in the unusual case in which a plaintiff includes allegations that show, on the face of the complaint, that there is some insuperable bar to relief." *Strand v. Diversified Collection Serv., Inc.*, 380 F.3d 316, 317 (8th Cir. 2004); *Baily Int'l, Inc. v. Harcros Chemicals, Inc.*, No. 4:14-CV-1708 JAR, 2015 WL 1781672, at \*1 (E.D. Mo. Apr. 15, 2015).

arguments with respect to preemption and any defenses it may assert under Missouri law are not properly raised in a motion to dismiss. Whether plaintiff's claim will ultimately fail for one or more of these reasons is not before me at this stage in the proceedings. Plaintiff is entitled to present evidence in support of its claims.

Accordingly,

**IT IS HEREBY ORDERED** that defendant's motion to dismiss [19] is denied.

**IT IS FURTHER ORDERED** that the motion for hearing [32] is denied as moot.

This case will be set for a scheduling conference by separate Order.



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RODNEY W. SIPPEL  
UNITED STATES DISTRICT JUDGE

Dated this 17th day of November, 2017.